

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

ROBERT E. COTNER,)	
)	
Plaintiff,)	
vs)	NO. CIV-14-0137-HE
)	
WARDEN McCOLLUM, et al.,)	
)	
Defendants.)	

ORDER

Plaintiff Robert E. Cotner, a state prisoner appearing *pro se*, filed this action pursuant to 42 U.S.C. § 1983 alleging various violations of his constitutional rights. Consistent with 28 U.S.C. § 636(b)(1)(B) & (C), the matter was referred for initial proceedings to Magistrate Judge Gary M. Purcell, who has recommended that plaintiff’s amended complaint be dismissed because plaintiff has three or more “strikes” within the meaning of 28 U.S.C. § 1915(g), and has not made a specific credible allegation that he is under imminent danger of serious physical harm. As petitioner objected to the Report and Recommendation, the court has conducted a de novo review of the magistrate judge’s determination.

After a careful review, the court agrees with the Report and Recommendation. As the magistrate judge noted, plaintiff is “another of the prodigious *pro se* filers who regularly inundate [the Tenth Circuit] and the district court with repetitive and largely frivolous filings.” [Doc. #19, pg. 2] (quoting Cotner v. State of Okla. ex rel County of Creek, 74 F.3d 1248 (Table), 1996 WL 6602, *1 (10th Cir. 1996)). Plaintiff “is subject to filing restrictions in this court, in the Tenth Circuit Court of Appeals, in the Supreme Court,” and the Oklahoma Court of Criminal Appeals. *Id.* at 2-3. Because plaintiff is subject to filing

restrictions, he must either pay the court filing fee or make a specific credible allegation that he is under imminent danger of serious physical harm. 28 U.S.C. § 1915(g).

Plaintiff has done neither. Instead, he objects to treatment by this and other courts in imposing “three strikes” status on him without formal hearings, questions the court’s ability to “read plain English”, and offers other similar objections. [Doc. #34, pg. 5]. He appears to suggest that prison over-crowding has forced him into living in cells with dangerous criminals, which, as the magistrate judge noted, is “a circumstance that can be said to be the result of incarceration in general.” Neither that allegation nor the other allegations addressing aspects of his medical care to which he objects are sufficient to suggest serious danger of imminent physical harm. Because plaintiff has failed to satisfy 28 U.S.C. § 1915(g), and has not otherwise paid the filing fee, his complaint will be dismissed.


Subsequent to the filing of his complaint and consistent with his past practice, plaintiff filed various motions and notices, including a “Motion for Hearing for Injunctive Relief,” an “Emergency Motion to Judge Hearrington (sic),” a “Motion to Appoint Counsel,” a “Motion for Hearing on Double Jeopardy,” and a “Motion for Declaratory Remedy for State Violations of 6th and 14th Amendments.” [Doc. Nos. 17, 28, 32, 33, and 36, respectively]. None of these attempt to make the necessary showing in light of plaintiff’s “three strikes” status and, for a variety of reasons, fail to state a claim or otherwise show a basis for relief from this court.

After de novo review, the court **ADOPTS** the Report and Recommendation [Doc. #19]. Plaintiff’s amended complaint [Doc. #15] is **DISMISSED**. Plaintiff’s “Motion for

Heating for Injunctive Relief,” “Emergency Motion to Judge Hearrington (sic),” “Motion to Appoint Counsel,” “Motion for Hearing on Double Jeopardy,” and “Motion for Declaratory Remedy for State Violations of 6th and 14th Amendments” are **DENIED** [Doc. Nos. 17, 28, 32, 33, and 36]. Inmates Glen Lindgren, Jr., Timothy Ryan, Charles Snapp, Christopher Driver, Sr., John Rush, Brian Breckenridge, Harold Allen, Stephen D. Maxwell, Arthur E. Pennington II, Virgil O’Bryant, John May, and Daniel Gene Mosky have filed motions to intervene in this case and to certify class [Doc. Nos. 20-27, 29-31, 35]. The motions are **DENIED**, as they do not state a proper basis for intervention or certification of class. Fed. R. Civ. P. 23 & 24.

IT IS SO ORDERED.

Dated this 9th day of May, 2014.



JOE HEATON
UNITED STATES DISTRICT JUDGE